

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

AMERICAN COUNCIL OF THE BLIND)	
OF INDIANA, INDIANA PROTECTION)	
AND ADVOCACY SERVICES)	
COMMISSION, KRISTIN FLESCHNER,)	
RITA KERSH, and WANDA TACKETT,)	
)	
Plaintiffs,)	Case No. 1:20-cv-3118-JMS-MJD
)	
v.)	
)	
INDIANA ELECTION COMMISSION;)	
THE INDIVIDUAL MEMBERS of the)	
INDIANA ELECTION COMMISSION,)	
in their official capacities; INDIANA)	
SECRETARY OF STATE, in her official)	
capacity; THE INDIANA ELECTION)	
DIVISION; and THE CO-DIRECTORS)	
OF THE INDIANA ELECTION)	
DIVISION, in their official capacities;)	
)	
Defendants.)	

MOTION TO COMPEL DISCOVERY

Come now Plaintiffs, by counsel, and respectfully move the Court to compel discovery from non-Party CIVIX. In support, Plaintiffs would show:

1. On February 14, 2022, Plaintiffs served the following on non-party CIVIX: (1) a subpoena to produce documents and a non-party request for production of documents; and (2) a

subpoena to testify at a deposition and a notice of deposition of CIVIX pursuant to Federal Rule of Civil Procedure 30(b)(6).¹

2. Pursuant to the subpoenas, the requested documents were to be served on Plaintiffs on or before March 14, 2022, and the 30(b)(6) deposition of CIVIX was to be held on March 22, 2022.

3. On March 11, 2022, counsel for Plaintiffs contacted CIVIX to confirm the March 22 deposition.

4. On March 14, 2022, counsel for CIVIX contacted counsel for Plaintiffs and informed Plaintiffs that counsel for CIVIX did not have the subpoenas, notice of deposition, and production request, and that a representative of CIVIX was unavailable for a deposition on March 22. Counsel for CIVIX stated that she was going to be out of the office on vacation from March 18, 2022, through April 8, 2022, and therefore unavailable for a deposition during that period.

5. On March 14, 2022, counsel for Plaintiffs provided counsel for CIVIX with another copy of the subpoena and deposition notice. On March 15 and 17, counsel for Plaintiffs inquired as to the CIVIX representative's availability for deposition on another date.

6. On March 17, 2022, counsel for Plaintiffs and counsel for CIVIX spoke by telephone about the subpoenas. Counsel for CIVIX informed Plaintiffs' counsel that she and the CIVIX representative would not be available for the deposition until after May 12, 2022, and provided available dates in May. Counsel for CIVIX also stated that CIVIX could respond to the production request on or before May 4, 2022.

¹ Plaintiffs served the subpoenas on CIVIX by certified mail. Plaintiffs confirmed that the subpoenas were received and signed for by CIVIX on February 22, 2022.

7. The deposition date and date for responsive production suggested by counsel for CIVIX do not comply with the subpoenas served by Plaintiffs or with the Federal Rules of Civil Procedure. *See Slabaugh v. State Farm Fire & Casualty Co.*, No. 1:12-cv-01020-RLY-MJD, 2013 WL 4777206, at * 2 (S.D. ind. Sept. 5, 2013) (“The party ... must respond within 30 days”) (quoting Fed. R. Civ. P. 34(b)(2)).

8. Additionally, while Plaintiffs generally prefer making accommodations for non-parties when responding to discovery, Plaintiffs cannot wait until the time that counsel for CIVIX has proposed, because Plaintiffs need the requested discovery prior to the deadline for their dispositive motion, May 4, 2022.

9. Plaintiffs have attempted to confer with counsel for CIVIX about this dispute. In addition to the above communications, counsel for Plaintiff sent an email to counsel for CIVIX on March 18, 2022. In response, Plaintiffs’ counsel received an out of office message from counsel for CIVIX, stating that counsel is out of the office until March 29, 2022, and did not provide an alternative point of contact for the time that she is out of the office.

10. Plaintiffs require discovery from CIVIX prior to filing their motion for summary judgment, which is currently due on May 4, 2022.

11. The federal discovery rules are liberal in order to assist in the preparation for trial and settlement of litigated disputes. *See Bond v. Utreras*, 585 F.3d 1061, 1075 (7th Cir. 2009); *see also Kodish v. Oakbrook Terrace Fire Prot. Dist.*, 235 F.R.D. 447, 450 (N.D. Ill. 2006). “The burden rests upon the objecting party to show why a particular discovery request is improper.” *Kodish*, 235 F.R.D. at 450.

12. Rule 30(b)(6) enables a party to depose a corporation, a governmental agency, or other entity. Fed. R. Civ. P. 30(b)(6). Once the party serves the entity with a notice naming the

entity as a deponent and describing the matters on which the party seeks testimony, the entity must designate someone to testify on those matters. *Id.* It is of no significance whether the named entity believes the discovery sought is objectionable—it has no choice but to designate a witness or move for a protective order. Fed. R. Civ. P. 37(d)(2); *United Consumers Club, Inc. v. Prime Time Mktg. Mgmt. Inc.*, 271 F.R.D. 487, 497–98 (N.D. Ind. 2010); *Bregman v. District of Columbia*, 182 F.R.D. 352, 355 (D.D.C. 1998) (“Confronted with a notice of deposition (or any other type of discovery) a party must either comply with the discovery demand or seek a protective order . . .”).

13. If the named entity fails to make a designation, the deposing party may move for an order compelling such designation. Fed. R. Civ. P. 37(a)(3)(B)(ii); *United Consumers Club*, 271 F.R.D. at 497–98.

14. Plaintiffs request that the Court issue an order compelling CIVIX to respond to the non-party request for production of documents on or before April 8, 2022, and produce a witness to testify at a deposition on or before April 20, 2022.

15. Plaintiffs also request leave to take the deposition of CIVIX following the non-expert discovery deadline (April 8, 2022).

16. Counsel for Defendant has been contacted about Plaintiffs’ request to take this deposition after the non-expert discovery deadline, and Defendant does not object.

WHEREFORE, Plaintiffs, by counsel, respectfully request that the Court issue an order compelling CIVIX to respond to Plaintiffs’ non-party request for production of documents on or before April 8, 2022, and to produce a witness to testify at a deposition on or before April 20, 2022.

Dated: March 25, 2022.

Respectfully submitted,

/ Samuel M. Adams

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on March 25th, 2022, the foregoing document was filed electronically with the Clerk of the Court using the CM/ECF System for all parties, and otherwise and notice was provided via e-mail to:

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I HEREBY CERTIFY that on March 25, 2022, the foregoing was sent to the following by electronic and U.S. Mail:

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